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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY,	)	CIVIL NO. CV07-00172 SOM LEK
	)	(Copyright)
Plaintiff,	)	
	)	<b>NOTICE OF HEARING MOTION;</b>
v.	)	<b>DEFENDANTS DEUTSCHE BANK</b>
	)	<b>TRUST COMPANY AMERICAS</b>
DEUTSCHE BANK TRUST	)	<b>(FKA BANKERS TRUST</b>
COMPANY AMERICAS (FKA	)	<b>COMPANY) AND JP MORGAN</b>
BANKERS TRUST COMPANY)	)	<b>CHASE BANK IN THEIR</b>
AND JP MORGAN CHASE BANK	)	<b>SEPARATE CAPACITIES AND AS</b>
IN THEIR SEPARATE CAPACITIES	)	<b>AGENTS FOR THE PRE AND</b>
AND AS AGENTS FOR THE PRE	)	<b>POST- PETITION LENDERS OF</b>
AND POST- PETITION LENDERS	)	<b>FLEMING COMPANIES, INC.'S</b>
OF FLEMING COMPANIES, INC.;	)	<b>MOTION TO DISMISS;</b>
DOES 1 TO 200,	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF MOTION; DECLARATION OF</b>
Defendants.	)	<b>ERIN N. BRADY IN SUPPORT OF</b>
	)	<b>MOTION TO DISMISS;</b>
	)	<b>EXHIBITS "A" - "W";</b>
	)	<b>CERTIFICATE OF SERVICE</b>
	)	
	)	
	)	
	)	
	)	
	)	
	)	

**DEFENDANTS DEUTSCHE BANK TRUST COMPANY AMERICAS  
(FKA BANKERS TRUST COMPANY) AND JP MORGAN CHASE BANK  
IN THEIR SEPARATE CAPACITIES AND AS AGENTS FOR THE PRE  
AND POST- PETITION LENDERS OF FLEMING COMPANIES, INC.'S  
MOTION TO DISMISS**

Defendants Deutsche Bank Trust Company Americas (fka Bankers Trust Company) and JP Morgan Chase Bank (collectively “Defendants”), by and through their attorneys, Lyle S. Hosoda & Associates, LLC, and Kirkland & Ellis, LLP, hereby move this Court for an order dismissing this case with prejudice and without leave to amend because (I) Berry’s unjust enrichment claim is preempted by the Copyright Act; (ii) Berry’s copyright claims are barred by the statute of limitations; (iii) Berry’s post-petition infringement claims are barred by Section 364 of the Bankruptcy Code and principles of collateral estoppel; and (iv) Berry has not and cannot plead a cognizable theory under which he could recover for contributory and vicarious infringement.

This motion is brought pursuant to Rules 7 and 12(b)(6) of the Federal Rules of Civil Procedures and L.R. 7.2 of the Local Rules of Practice of the United States District Court for the District of Hawaii, and is based upon the attached memorandum in support, declaration of counsel, exhibits, and the records and files herein.

DATED: Honolulu, Hawaii, June 12, 2007.

/s/ Lyle S. Hosoda  
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